

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1136**

Introduced by Bromm, 23; Baker, 44; Crosby, 29; Dierks, 40;  
Hartnett, 45; Kremer, 34; Lynch, 13; Dw.  
Pedersen, 39; Preister, 5; Redfield, 12; Tyson, 19

Read first time January 10, 2000

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-908 and 77-3806, Reissue Revised Statutes of Nebraska,  
3 section 77-2734.03, Revised Statutes Supplement, 1998,  
4 and section 77-2715.07, Revised Statutes Supplement,  
5 1999; to adopt the Elementary and Secondary Scholarship  
6 Assistance Act; to harmonize provisions; to provide an  
7 operative date; to provide severability; and to repeal  
8 the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1.   Sections 1 to 6 of this act shall be known  
2 and may be cited as the Elementary and Secondary Scholarship  
3 Assistance Act.

4           Sec. 2.   The Legislature hereby finds that enabling the  
5 greatest number of parents and legal guardians to choose among the  
6 widest array of quality educational opportunities for children will  
7 improve the quality of education available to all children. The  
8 Legislature further finds that nonpublic elementary and secondary  
9 schools in Nebraska satisfy the state's requirements for legal  
10 operation and provide quality educational opportunities for  
11 children. The Legislature further finds that, for parents and  
12 legal guardians who are paying taxes in support of public  
13 elementary and secondary schools, choosing nonpublic schools for  
14 their children can be a financial burden. Therefor, it is in the  
15 best interest of the state and its citizens to assist parents and  
16 legal guardians in choosing the educational opportunities best  
17 suited for their children by encouraging individuals and business  
18 firms to support programs which financially assist parents and  
19 legal guardians in paying tuition for their children at nonpublic  
20 elementary and secondary schools. In order to accomplish this  
21 worthy public purpose, the Legislature hereby provides for limited  
22 tax credits for voluntary contributions to certified school-tuition  
23 organizations.

24           Sec. 3.   For purposes of the Elementary and Secondary  
25 Scholarship Assistance Act:

26           (1) Business firm means any business entity, including a  
27 corporation, a fiduciary, a sole proprietorship, a partnership, a  
28 limited liability company, a corporation having an election in

1 effect under Chapter 1, subchapter S of the Internal Revenue Code,  
2 subject to the state income tax imposed by section 77-2715 or  
3 77-2734.02, an insurance company paying premium or related  
4 retaliatory taxes in this state pursuant to section 44-150 or  
5 77-908, or a financial institution paying the tax imposed pursuant  
6 to sections 77-3801 to 77-3807;

7 (2) Department means the Department of Revenue;

8 (3) Qualified school means any nonpublic elementary or  
9 secondary school in this state, including any private,  
10 denominational, or parochial school, that does not discriminate on  
11 the basis of race, color, or national origin and that satisfies the  
12 requirements prescribed by law for the legal operation of nonpublic  
13 schools in this state on or after January 1, 2000;

14 (4) Scholarship means a financial grant-in-aid to assist  
15 a student in paying the cost of tuition and includes any tuition  
16 grants;

17 (5) School tuition organization means an organization in  
18 this state that is exempt from federal taxation under section  
19 501(c)(3) of the Internal Revenue Code and that allocates at least  
20 ninety percent of its annual revenue for scholarships to help  
21 children attend any qualified school of their parents' or legal  
22 guardians' choice; and

23 (6) Tuition means any amount charged by a qualified  
24 school for the opportunity to be enrolled in its instructional  
25 program.

26 Sec. 4. Any school tuition organization shall apply to  
27 the Department of Revenue to have one or more programs of  
28 scholarships certified for tax-credit status. The application

1 shall describe the program to be conducted and set forth evidence  
2 that the organization satisfies the requirements which constitute  
3 the definition of school tuition organization pursuant to section 3  
4 of this act.

5           Sec. 5. (1) A credit is allowed against the state income  
6 tax pursuant to subsection (5) of section 77-2715.07 or subsection  
7 (4) of section 77-2734.03, the state premium tax or related  
8 retaliatory taxes paid by insurance companies pursuant to section  
9 77-908, and the franchise tax paid by financial institutions  
10 pursuant to subsection (4) of section 77-3806, as applicable, for  
11 the amount of cash contributions made by any individual or business  
12 firm to a school tuition organization, but such credit shall not  
13 exceed five hundred dollars in any taxable year.

14           (2) If the allowable tax credit exceeds the taxes  
15 otherwise due, the taxpayer may carry the amount of the claim not  
16 used to offset taxes forward for not more than five consecutive  
17 years' tax liability.

18           (3) The credit allowed by this section is in lieu of any  
19 deduction pursuant to section 170 of the Internal Revenue Code and  
20 taken for state tax purposes.

21           (4) The tax credit is not allowed if the taxpayer  
22 designates the taxpayer's donation to the school tuition  
23 organization for the direct benefit of any dependent of the  
24 taxpayer.

25           Sec. 6. For all business firms eligible for the credit  
26 allowed by the Elementary and Secondary Scholarship Assistance Act,  
27 except for insurance companies paying premium and related  
28 retaliatory taxes in this state pursuant to section 77-908, the Tax

1 Commissioner shall adopt and promulgate rules and regulations to  
2 implement the act. The Director of Insurance shall adopt and  
3 promulgate rules and regulations to provide the credit allowed by  
4 the act to insurance companies paying premium and related  
5 retaliatory taxes in this state pursuant to section 44-150 or  
6 77-908.

7           Sec. 7. Section 77-908, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           77-908. Every insurance company organized under the  
10 stock, mutual, assessment, or reciprocal plan, except fraternal  
11 benefit societies, which is transacting business in this state  
12 shall, on or before March 1 of each year, pay a tax to the director  
13 of one percent of the gross amount of direct writing premiums  
14 received by it during the preceding calendar year for business done  
15 in this state, except that (1) for group sickness and accident  
16 insurance the rate of such tax shall be five-tenths of one percent  
17 and (2) for property and casualty insurance, excluding individual  
18 sickness and accident insurance, the rate of such tax shall be one  
19 percent. The taxable premiums shall include premiums paid on the  
20 lives of persons residing in this state and premiums paid for risks  
21 located in this state whether the insurance was written in this  
22 state or not, including that portion of a group premium paid which  
23 represents the premium for insurance on Nebraska residents or risks  
24 located in Nebraska included within the group when the number of  
25 lives in the group exceeds five hundred. The tax shall also apply  
26 to premiums received by domestic companies for insurance written on  
27 individuals residing outside this state or risks located outside  
28 this state if no comparable tax is paid by the direct writing

1 domestic company to any other appropriate taxing authority.  
2 Companies whose scheme of operation contemplates the return of a  
3 portion of premiums to policyholders, without such policyholders  
4 being claimants under the terms of their policies, may deduct such  
5 return premiums or dividends from their gross premiums for the  
6 purpose of tax calculations. Any such insurance company shall  
7 receive a credit on the tax imposed as provided in the Community  
8 Development Assistance Act and the Elementary and Secondary  
9 Scholarship Assistance Act.

10 Sec. 8. Section 77-2715.07, Revised Statutes Supplement,  
11 1999, is amended to read:

12 77-2715.07. (1) There shall be allowed to qualified  
13 resident individuals as a nonrefundable credit against the income  
14 tax imposed by the Nebraska Revenue Act of 1967:

15 (a) A credit equal to the federal credit allowed under  
16 section 22 of the Internal Revenue Code; and

17 (b) A credit for taxes paid to another state as provided  
18 in section 77-2730.

19 (2) There shall be allowed to qualified resident  
20 individuals against the income tax imposed by the Nebraska Revenue  
21 Act of 1967:

22 (a) For returns filed reporting federal adjusted gross  
23 incomes of greater than twenty-nine thousand dollars, a  
24 nonrefundable credit equal to twenty-five percent of the federal  
25 credit allowed under section 21 of the Internal Revenue Code of  
26 1986, as amended;

27 (b) For returns filed reporting federal adjusted gross  
28 income of twenty-nine thousand dollars or less, a refundable credit

1 equal to a percentage of the federal credit allowable under section  
2 21 of the Internal Revenue Code of 1986, as amended, whether or not  
3 the federal credit was limited by the federal tax liability. The  
4 percentage of the federal credit shall be one hundred percent for  
5 incomes not greater than twenty-two thousand dollars, and the  
6 percentage shall be reduced by ten percent for each one thousand  
7 dollars, or fraction thereof, by which the reported federal  
8 adjusted gross income exceeds twenty-two thousand dollars; and

9 (c) A refundable credit for individuals who qualify for  
10 an income tax credit under the Beginning Farmer Tax Credit Act for  
11 all taxable years beginning or deemed to begin on or after January  
12 1, 2001, under the Internal Revenue Code of 1986, as amended.

13 (3) There shall be allowed to all individuals as a  
14 nonrefundable credit against the income tax imposed by the Nebraska  
15 Revenue Act of 1967:

16 (a) A credit for personal exemptions allowed under  
17 section 77-2716.01; and

18 (b) A credit for contributions to certified community  
19 betterment programs as provided in the Community Development  
20 Assistance Act. Each partner, each shareholder of an electing  
21 subchapter S corporation, each beneficiary of an estate or trust,  
22 or each member of a limited liability company shall report his or  
23 her share of the credit in the same manner and proportion as he or  
24 she reports the partnership, subchapter S corporation, estate,  
25 trust, or limited liability company income.

26 (4) There shall be allowed as a credit against the income  
27 tax imposed by the Nebraska Revenue Act of 1967:

28 (a) A credit to all resident estates and trusts for taxes

1 paid to another state as provided in section 77-2730; and

2 (b) A credit to all estates and trusts for contributions  
3 to certified community betterment programs as provided in the  
4 Community Development Assistance Act.

5 (5) There shall be allowed to all individuals as a credit  
6 against the income tax imposed by the Nebraska Revenue Act of 1967  
7 a credit for contributions to certified school tuition  
8 organizations as provided in the Elementary and Secondary  
9 Scholarship Assistance Act. When the contribution is made by a  
10 partnership, a subchapter S corporation, an estate or trust, or a  
11 limited liability company, each partner, shareholder, beneficiary,  
12 or member shall report his or her share of the credit in the same  
13 manner and proportion as he or she reports the partnership,  
14 subchapter S corporation, estate, trust, or limited liability  
15 company income.

16 Sec. 9. Section 77-2734.03, Revised Statutes Supplement,  
17 1998, is amended to read:

18 77-2734.03. (1)(a) For taxable years commencing prior to  
19 January 1, 1997, any (i) insurer paying a tax on premiums and  
20 assessments pursuant to section 77-908 or 81-523, (ii) electric  
21 cooperative organized under the Joint Public Power Authority Act,  
22 or (iii) credit union shall be credited, in the computation of the  
23 tax due under the Nebraska Revenue Act of 1967, with the amount  
24 paid during the taxable year as taxes on such premiums and  
25 assessments and taxes in lieu of intangible tax.

26 (b) For taxable years commencing on or after January 1,  
27 1997, any insurer paying a tax on premiums and assessments pursuant  
28 to section 77-908 or 81-523, any electric cooperative organized



1 under the Joint Public Power Authority Act, or any credit union  
2 shall be credited, in the computation of the tax due under the  
3 Nebraska Revenue Act of 1967, with the amount paid during the  
4 taxable year as (i) taxes on such premiums and assessments included  
5 as Nebraska premiums and assessments under section 77-2734.05 and  
6 (ii) taxes in lieu of intangible tax.

7 (c) For taxable years commencing or deemed to commence  
8 prior to, on, or after January 1, 1998, any insurer paying a tax on  
9 premiums and assessments pursuant to section 77-908 or 81-523 shall  
10 be credited, in the computation of the tax due under the Nebraska  
11 Revenue Act of 1967, with the amount paid during the taxable year  
12 as assessments allowed as an offset against premium and related  
13 retaliatory tax liability pursuant to section 44-4233.

14 (2) There shall be allowed to corporate taxpayers a  
15 credit for nonhighway use motor vehicle fuels as provided in  
16 section 66-4,124.

17 (3) There shall be allowed to corporate taxpayers a tax  
18 credit for contributions to community betterment programs as  
19 provided in the Community Development Assistance Act.

20 (4) There shall be allowed to corporate taxpayers a tax  
21 credit for contributions to certified school tuition organizations  
22 as provided in the Elementary and Secondary Scholarship Assistance  
23 Act.

24 Sec. 10. Section 77-3806, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 77-3806. (1) The tax return shall be filed and the total  
27 amount of the franchise tax shall be due on the fifteenth day of  
28 the third month after the end of the taxable year. No extension of

1 time to pay the tax shall be granted. If the Tax Commissioner  
2 determines that the amount of tax can be computed from available  
3 information filed by the financial institutions with either state  
4 or federal regulatory agencies, the Tax Commissioner may, by  
5 regulation, waive the requirement for the financial institutions to  
6 file returns.

7 (2) Sections 77-2714 to 77-27,135 relating to  
8 deficiencies, penalties, interest, the collection of delinquent  
9 amounts, and appeal procedures for the tax imposed by section  
10 77-2734.02 shall also apply to the tax imposed by section 77-3802.  
11 If the filing of a return is waived by the Tax Commissioner, the  
12 payment of the tax shall be considered the filing of a return for  
13 purposes of sections 77-2714 to 77-27,135.

14 (3) No refund of the tax imposed by section 77-3802 shall  
15 be allowed unless a claim for such refund is filed within ninety  
16 days of the date on which (a) the tax is due or was paid, whichever  
17 is later, or (b) a change is made to the amount of deposits or the  
18 net financial income of the financial institution by a state or  
19 federal regulatory agency.

20 (4) Any such financial institution shall receive a credit  
21 on the franchise tax as provided under the Community Development  
22 Assistance Act and the Elementary and Secondary Scholarship  
23 Assistance Act.

24 Sec. 11. This act is operative for all taxable years  
25 beginning or deemed to begin on or after January 1, 2000, under the  
26 Internal Revenue Code of 1986, as amended.

27 Sec. 12. If any section in this act or any part of any  
28 section is declared invalid or unconstitutional, the declaration

1 shall not affect the validity or constitutionality of the remaining  
2 portions.

3           Sec. 13. Original sections 77-908 and 77-3806, Reissue  
4 Revised Statutes of Nebraska, section 77-2734.03, Revised Statutes  
5 Supplement, 1998, and section 77-2715.07, Revised Statutes  
6 Supplement, 1999, are repealed.